

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR P. DORE,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

June 10, 2003

No. 238344

Tax Tribunal

LC No. 00-239900

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Petitioner appeals as of right a judgment entered by the Michigan Tax Tribunal affirming sales, use, withholding, and single business tax assessments issued against him by the Department of Treasury. We affirm.

I

Petitioner purchased Maday Valley Cabinets, Inc., in 1992. Petitioner incorporated Dore Cabinets, Inc., and filed a certificate of assumed name for the business to operate as Maday Valley Cabinets. Dore and Associates Contracting was the one hundred percent shareholder of Dore Cabinets, Inc., and petitioner was the one-hundred percent shareholder of Dore and Associates Contracting. Maday Valley Cabinets discontinued business on September 19, 1994.

In January 1995, the Department of Treasury issued notices of intent to assess tax liability against petitioner as the sole responsible officer of Dore Cabinets, Inc. (Dore). The assessments included sales tax, use tax, and withholding tax for August through December 1992 and March through December 1993, as well as single business tax for tax years 1992 and 1993. The department issued final assessments against petitioner for these assessments in February 1995.

Petitioner challenged the assessments, claiming that he was “not an officer having control or supervision of, or charged with the responsibility for, making the returns or payments of taxes at issue as required by MCL 205.27c(5).” He alleged that he played no role in Dore’s day-to-day operations and asserted that a management team had responsibility for filing tax returns and making tax payments in 1992 and 1993. Petitioner denied signing several documents that bore his purported signature, including Dore’s May 1992 sales, use, withholding, and single business tax return.

In affirming the assessments, the tribunal rejected petitioner's claims that he had not signed, or authorized others to sign, the disputed documents, and concluded that respondent established a prima facie case for holding petitioner responsible for the corporation's taxes pursuant to MCL 205.27a(5). The tribunal further concluded that at "all times relevant to the assessments at issue," petitioner was a corporate officer of Maday and "clearly had control of or was charged with the responsibility for making the returns or payments."

II

MCL 205.27a(5) provides in pertinent part:

If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. [MCL 205.27a(5).]

Our review of Tax Tribunal decisions is very limited. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486; 618 NW2d 917 (2000). Absent a claim of fraud, this Court's review of the tribunal's decision is limited to whether the decision is authorized by law and is supported by competent, material, and substantial evidence on the whole record. *Michigan Bell Telephone Co v Dep't of Treasury*, 229 Mich App 200, 206; 581 NW2d 770 (1998); *Canterbury Health Care, Inc v Dep't of Treasury*, 220 Mich App 23, 28; 558 NW2d 444 (1996).

The statute's signature mechanism establishes a prima facie case of derivative officer liability. Respondent met this initial burden of establishing a prima facie case by demonstrating petitioner was a corporate officer and producing petitioner's signature on a return or negotiable instrument submitted in payment of the corporation's taxes. See *Peterson v Dep't of Treasury*, 145 Mich App 445, 450; 377 NW2d 887 (1985) (discussing a similar corporate liability statute, MCL 205.65(2)). Petitioner's signature, in his own handwriting or affixed by another person with authorization, is prima facie evidence that he bore responsibility regarding the corporation's taxes.¹ The tribunal rejected as not credible petitioner's testimony that he neither executed nor authorized others to affix his signature to the relevant tax documents. In reviewing a tribunal decision, this Court will not assess witness credibility. *Great Lakes Division of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 408; 576 NW2d 667 (1998).

Because respondent established a prima facie case, petitioner bore the burden of rebutting the presumption of liability. We reject petitioner's argument that the tribunal essentially imposed a type of strict liability by equating a prima facie case with proof that petitioner had

¹ The signature merely gives rise to a presumption that the officer has control or responsibility. Further, the signature mechanism is merely one way a finding of derivative liability can be supported. Derivative liability can also be supported by competent, material, and substantial evidence that plaintiff exercised supervisory authority over the making of the tax returns.

control. The tribunal made specific findings of fact in support of its conclusion that petitioner had “control of or was charged with the responsibility for making the returns or payments.” The record shows that petitioner is the sole owner of Dore Cabinets and was the president and treasurer of Dore Cabinets. Petitioner had signatory power for Dore Cabinets’ bank account, and signed tax documents or gave authority for others to sign his name to tax documents. Even though testimony demonstrated petitioner had little involvement with Dore Cabinets’ day-to-day operations, petitioner need not have actually performed the tasks involved in filing the corporation’s returns or paying its taxes to be held liable. See *Christel v Dep’t of Treasury*, 7 MTTR 196 (Docket No. 148716, June 11, 1992) (an officer cannot escape personal liability by choosing to delegate responsibility to an employee who was not a corporate officer). We conclude that this evidence is competent, material, and substantial proof that petitioner had supervisory authority over the making of the corporation’s tax returns for the period at issue.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Joel P. Hoekstra

/s/ Peter D. O’Connell